



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/529,568
Filing Date: March 28, 2005
Appellant(s): VIOLA, FRANK J

J MAILED

JAN 08 2006

Group 3700

Frank J. Viola
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed October 12, 2007 appealing from the Office action mailed February 01, 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

No evidence is relied upon by the examiner in the rejection of the claims under appeal.

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 17-27 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Plyley et al. (USPN 5,816,471).

Plyley discloses a tool assembly comprising a pair of jaws including a first jaw and a second jaw (16, 14), each of the jaws having a proximal end and a distal end, the first and second jaws being movable in relation to the other between a spaced position and an approximated position; first and second cam followers (211, 212) as shown in fig. 6 supported on one of the first and second jaws; and an approximation member (46B) including at least one cam surface (201, 203) positioned to engage the first and second cam followers, the approximation member being movable to move the at least one cam surface in relation to the first and second cam followers, and move the first jaw between three positions as claimed as shown in Figs. 1-3 and 10-12 (claim 17). The first jaw includes an anvil 16 and the second jaw includes a cartridge assembly 14 (claim 18). The at least one cam surface includes first and second cam channels (201, 203) (claim 19); wherein the at least one cam channel (203) includes first and second cam channels (claim 20); wherein the approximation member includes a flat plate 46 having the at least one cam surface formed therein as shown in Fig. 5A (claim 21); wherein the first jaw includes a longitudinal slot formed in its proximal end 204 as shown in Fig. 8 (claim 22); wherein the first and second cam followers are supported on the proximal end 204 of the first jaw and extend across the longitudinal slot adjacent at least one cam surface as shown in Figs. 6 and 8 (claim 23); the first cam follower extending through the first cam channel and the second cam follower extending through the second cam channel as shown in Fig. 6 (claim 24); a body portion 17, wherein the tool assembly attached to the body portion by an articulation joint 17,18 (claim 25); wherein the body portion forms a distal end of a surgical stapling device and the

proximal portion of a disposable loading unit 112 (claims 26-27); and wherein the first jaw is an anvil and the second jaw is a cartridge assembly (claim 37).

(10) Response to Argument

Applicant's argument states that Plyley fails to disclose or suggest an actuating stroke which effectuates movement of "the distal end of the first jaw away from the second jaw in a second portion of the actuating stroke" as recited in independent claim 17. Examiner agrees that Plyley suggest an actuating stroke which effectuates movement of the first jaw between three portions of said actuating stroke, i.e. 1) approximate a distal end of the first jaw with the second jaw as shown in fig. 2, 2) move the distal end of the first jaw away from the second jaw as shown in fig. 1, and 3) bring together the first and the second jaw as shown in fig. 3. Note that Plyley's device comprises a handle portion (12) adapted to be manually grasped and actuated by a surgeon, which allows the capability to operate the device with a desired actuating stroke sequence, for example, to approximate the distal ends of the jaws in a first portion of the actuating stroke, to separated said distal ends in a second portion of the actuating stroke, and to bring the jaws together in a final portion of the actuating stroke.

Also note that the actuating stroke sequence as claimed is not suggested and or shown in the instance application drawings. Applicant invention claims: approximate a distal end of the first jaw with the second jaw in a first portion of the actuating stroke and move the distal end of the first jaw away from the second jaw in a second portion of the actuating stroke, while the drawings 4A-4B of the instant application show an actuating stroke sequence opposite to the claimed sequence.

Application/Control Number:
10/529,568
Art Unit: 3721

Page 5

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Michelle Lopez *Michelle Lopez*

Conferees:

Rinaldi Rada

Mark Jimenez

Rinaldi Rada
Mark Jimenez